

## Internal Revenue Service

Number: **200915031**  
Release Date: 4/10/2009  
Index Number: 351.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02  
PLR-150078-08

Date:  
December 22, 2008

## LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

FSub 1 =

FSub 2 =

FSub 3 =

Business A =

FCo 1 =

Date 1 =

Date 2 =

Year 1 =

Country A =

Country B =

Foreign Regulator =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

Dear :

We respond to your letter dated November 24, 2008, submitted on behalf of Parent, requesting rulings concerning the federal income tax consequences of the proposed transactions described below. The information provided in that letter and in later correspondence is summarized below. All dates in this letter are within the 20 calendar year.

## FACTS

Parent is the common parent of an affiliated group of corporations (the “Parent Group”), which files a consolidated federal income tax return with a taxable year ending on Date 2. Parent indirectly owns all of the stock of Sub 1, which in turn directly and indirectly owns all of the stock of Sub 2. Sub 2 directly owns all of the stock of Sub 3 and Sub 4. Each of Sub 1, Sub 2, Sub 3, and Sub 4 are members of the Parent Group. Sub 3 wholly owns FSub 1, which wholly owns FSub 2. FSub 1 is a Country B company that is disregarded as an entity separate from Sub 3 for U.S. federal income tax purposes. FSub 2 is a Country A company that is disregarded as an entity separate from Sub 3 for U.S. federal income tax purposes.

FSub 2 and Sub 4 together own all of the outstanding stock of FSub 3, a Country A company that is classified as a corporation for U.S. federal income tax purposes. Prior to the stock issuance described below, FSub 3 had a ordinary shares outstanding with a nominal value of b each. FSub 2 was the owner of c shares, and Sub 4 was the owner of d shares. FSub 3 is engaged in Business A in Country A. FSub 3 is regulated by Foreign Regulator in Country A.

FCo 1 is a publicly listed Country A company that is classified as a corporation for U.S. federal income tax purposes. FCo 1 is engaged in Business A in Country A and is regulated by Foreign Regulator. In Year 1, FSub 3 purchased approximately e percent of FCo 1’s outstanding stock in exchange for f. FSub 3’s purchase of the FCo 1 shares was, in part, funded by a capital contribution of g from FSub 2 on Date 1. In exchange for the contribution of g, FSub 2 received h newly issued ordinary shares of FSub 3 (the “Share Issuance”). Sub 4 neither contributed funds to FSub 3 nor acquired any additional shares of FSub 3 in connection with FSub 3’s acquisition of FCo 1 shares.

Based on the value of FSub 3 at the time of the Share Issuance, FSub 2 should have received approximately i (a number less than h) shares of FSub 3 (which would have had a fair market value equal to the g contributed by FSub 2) instead of h shares of FSub 3. None of the parties sought to achieve, or achieved, any U.S. or Country A tax benefit by issuing to FSub 2 shares of FSub 3 with a fair market value in excess of the g contributed by FSub 2.

The number of FSub 3 ordinary shares issued to FSub 2 pursuant to the Share Issuance was determined without regard to the value of such shares. Rather, under Country A law, the number of shares issued was based upon certain legal requirements and regulatory and stamp tax considerations. Neither Parent nor its United States tax advisors realized that FSub 3 was going to issue shares with a fair market value in excess of the value contributed by FSub 2. As soon as Parent became aware of the excess shares issued, Parent immediately investigated ways to rescind such shares.

## **PROPOSED TRANSACTION**

Parent proposes to rescind the issuance of approximately i (the excess of i over h) shares (the “Rescinded Shares”) by causing FSub 3 to redeem the Rescinded Shares from FSub 2 for no consideration (the “Rescission Transaction”).

The purpose of the Rescission Transaction is to restore the parties, in all material respects, to the position that they would have been in all along had the Rescinded Shares never been issued. The specific steps necessary to implement the Rescission Transaction are set forth below. All of these steps have been completed or will be completed by Date 2.

- (i) FSub 3’s shareholders (i.e., Sub 4 and FSub 2) had a shareholders’ meeting at which they adopted a resolution to redeem the Rescinded Shares for zero consideration.
- (ii) FSub 3 requested the Foreign Regulator’s approval for FSub 3 to redeem the Rescinded Shares for no consideration.
- (iii) Foreign Regulator approved FSub 3’s redemption of the Rescinded Shares for no consideration.
- (iv) FSub 3 filed a motion to register the redemption of the Rescinded Shares with a Country A court.
- (v) The Country A court registered the redemption of the Rescinded Shares.
- (vi) The share certificate reflecting FSub 2’s ownership of shares of FSub 3 will be amended to reflect the redemption of the Rescinded Shares.

## **REPRESENTATIONS**

Parent has made the following representations with respect to the Rescission Transaction:

- (a) The intent and effect of the Rescission Transaction was to restore in all material respects the legal and financial arrangements with respect to the ownership of FSub 3 stock by Sub 4 and FSub 2 that would have existed had the Rescinded Shares never been issued.

- (b) During the period beginning on the date of the Share Issuance and ending on the date of step (v) of the Rescission Transaction, the issuance of the Rescinded Shares had no legal or material economic consequences to any of FSub 2, FSub 3, Sub 3, or Sub 4.
- (c) None of FSub 3, FSub 2, Sub 3, or any other member of the Parent Group has taken or will take any material position for U.S. federal tax purposes inconsistent with the position that would have existed had the Rescinded Shares never been issued.

### **RULING**

Based solely on the facts submitted, the representations made, and the parties' restoration by Date 2 of the relative positions they would have occupied if the Rescinded Shares had never been issued (Rev. Rul. 80-58, 1980-1 C.B. 181), we rule that, for federal income tax purposes, FSub 3 will be treated as not having issued the Rescinded Shares.

### **CAVEATS**

Except as expressly provided herein, we express no opinion concerning the tax consequences of these transactions under any other provision of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, these transactions.

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Filiz A. Serbes  
Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: